

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6792 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

JOYCE E. SLY
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-354

S.S.A. No. .

FORMERLY BENEFIT DECISION NO. 6792
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SANITARY DISPOSAL COMPANY
(Employer-Appellant)

Employer Account No. (Not shown)

The employer appealed from Referee's Decision No. S-31712 which dismissed the employer's appeal as untimely filed without good cause under the Unemployment Insurance Code.

STATEMENT OF FACTS

On March 3, 1966 the Department of Employment mailed to the employer notices of ruling and determination which were adverse to the employer. Because the tenth day following March 3, 1966 was a Sunday, the notices specified that they were final unless an appeal was filed on or before Monday, March 14, 1966.

The office manager for the employer testified, and the referee in his findings of fact specifically found, that the appeal was deposited in a United States Post Office mail box in the late afternoon of March 14, 1966. The appeal was properly addressed; had the proper postage affixed; and was postmarked March 15, 1966, 1 p.m. The referee dismissed the appeal on the ground that it was not filed within the appeal period and that good cause did not exist for the delay because the office manager could have filed the appeal several days earlier but waited to file it on the last day.

Although the appeal was dismissed by the referee, a hearing was conducted on the merits of the case.

The question before us for consideration is whether an appeal which is deposited in the United States mail on the final day of the appeal period is timely when it is post-marked the next day.

REASONS FOR DECISION

Section 1328 of the Unemployment Insurance Code provides that an appeal may be filed within ten days now 20 days from the mailing or personal service of the notice of determination. The ten-day period may be extended for good cause. Section 1030 of the code provides that appeals may be taken from rulings in the same manner as appeals from determinations on benefit claims.

The general rule of law is that a communication is deemed to be made when it is placed in the course of acceptable transmission, such as at the time when a letter, properly addressed and with the proper postage affixed, is deposited with the postal authorities (Dunlop v. Higgins (1848), 1 H.L. Cas. 381; Civil Code section 1583 and Code of Civil Procedure section 1013). Sections 1114, 1134(d), and 1140 of the Unemployment Insurance Code specifically provide with respect to notices by the Department of Employment that service " . . . is complete at the time of deposit in the United States mail." Section 1140 of the code also provides that service by mail shall be made pursuant to section 1013 of the Code of Civil Procedure.

In Ruling Decisions Nos. 94 and 98 we held that while section 1013 of the Code of Civil Procedure pertains to the service of notices in civil actions, the same standards should also apply to information submitted to the Department of Employment by mail. Thus, we held in Ruling Decision No. 98 that the employer's protest was timely when there was substantial evidence that it had been mailed on the tenth and final day for the protest although it was postmarked the following day.

We have also recognized this general rule in a number of benefit decisions. In Disability Decision No. 601 and in Benefit Decision No. 6654, where the claimants' appeals were mailed within the appeal period but apparently were not received by the Department, we held that the appeals were timely filed. In Benefit Decision No. 6654, the referee had made a finding which was contrary to the claimant's direct testimony. We stated that the trier of facts may disbelieve testimony but not arbitrarily, and the record disclosed no legal ground for the referee's refusal to credit the claimant's testimony that the appeal had been mailed within the appeal period. In Benefit

Decision No. 6338, we held that a telegram deposited with the telegraph office on the final day to file an appeal was timely filed, stating:

"As has been observed, the board's rules provide in effect that a mailed appeal is considered filed on the date it is placed in the mail. In our opinion, a similar conclusion should be reached with respect to an appeal transmitted through a telegraph company. . . ."

In Benefit Decision No. 5625, we held that an appeal was timely when it was deposited in the mail on the tenth day but was postmarked the eleventh day. Subsequently, in Benefit Decision No. 5666, the same circumstances occurred and we overruled Benefit Decision No. 5625 insofar as it held that the claimant had filed a timely appeal and held that the appeal was untimely but that good cause existed for the one-day delay. We reached a similar conclusion in Benefit Decision No. 5730 referring specifically to a provision in the California Administrative Code that an appeal to a referee "shall be deemed filed on the postmark date shown on the envelope in which it was mailed." In Benefit Decision No. 6021 we again held that the appeal filed on the tenth day but postmarked the eleventh day was untimely but that good cause existed for extending the time limitation, referring both to Benefit Decision No. 5666 and the provision in the California Administrative Code. We reached a similar result in Benefit Decision No. UCV-7, citing Benefit Decision No. 5730.

Effective February 19, 1966, we adopted new rules governing the filing of appeals and the conduct of hearings under the Unemployment Insurance Code. With respect to the date when an appeal is filed, both to a referee and to this board, we provided in sections 5024 and 5104 of Title 22 of the California Administrative Code that an appeal " . . . shall be deemed filed on the date it is delivered or mailed The mailing date shall be presumed to be the postmark date appearing on the envelope if the postage was prepaid and the envelope was properly addressed. . . . " The rules formerly provided that an appeal was "deemed filed on the date it is delivered . . . or if an appeal is mailed it shall be presumed filed on the postmark date appearing on the envelope in which it was mailed. . . ."

In view of our recent change in our rules to provide that the appeal is deemed filed when it is mailed, and in accordance with the general law on this subject and other specific provisions in the Unemployment Insurance Code, we hold that the appropriate rule is that an appeal is filed at

the time it is deposited in the mail and that when there is substantial evidence that the appeal was deposited in the mail within the appeal period, the presumption that the appeal was filed on the postmarked date is overcome and the appeal is in fact timely. In so holding, we modify the views which have been expressed to the contrary in some of our previous decisions and, in particular, in Benefit Decisions Nos. 5666, 5730, 6021, and UCV-7.

In the present case, the office manager for the employer testified and the referee accordingly found that the appeal was deposited in the United States Post Office mail box on the final day of the appeal period. Therefore, in accordance with the views which we have discussed herein, we hold that the appeal was, in fact, timely and should not have been dismissed by the referee. As the appeal was timely filed, no question of good cause for late filing of the appeal was before the referee for consideration. As a hearing was conducted on the merits of the case, the referee's decision dismissing the appeal must be set aside and the matter remanded to the referee for a decision on the merits.

DECISION

The decision of the referee dismissing the employer's appeal is set aside. The matter is remanded to the referee for decision on the merits.

Sacramento, California, August 12, 1966.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6792 is hereby designated as Precedent Decision No. P-B-354.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

I dissent.

Assuming for the moment that the minor issue posed herein is valid in view of the wealth of law handed down by the judiciary, no useful purpose is served by elevating the instant case to precedent status.

I will concur in the ultimate conclusions reached that an appeal is timely filed if deposited in the mail within the time limits imposed. However, the consideration given this case, which was issued in 1966, ignores the fact that both the statute and the regulations have since been amended.

If the issue posed, which has been observed by this Board consistently, requires clarification, there are sufficient cases currently submitted not only to the area Offices of Appeals but to the Appeals Board itself which could be utilized, thus eliminating the necessity of so dignifying an earlier and outdated decision. For such reasons I oppose the proposed elevation of the instant decision.

CARL A. BRITSCHGI